Filed 9/19/06 In re Raquel B. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re RAQUEL B., a Person Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. ROBERT C., Defendant and Appellant.	E040389 (Super.Ct.No. JUVIJ4830) OPINION

APPEAL from the Superior Court of Riverside County. Christopher J. Sheldon, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Respondent.

No appearance for Minor.

I. INTRODUCTION

Robert C. (father) appeals from an order of the juvenile court terminating his parental rights as to Raquel B. (born in April 2003). We find no error, and we affirm.

II. FACTS AND PROCEDURAL BACKGROUND

In March 2005, the Riverside County Department of Public Social Services (Department) filed a petition under Welfare and Institutions Code[1] section 300, subdivisions (b) and (g), alleging that Michelle B. (mother)[2] had brought Raquel to the Indio Child Protective Services office because mother believed she was not capable of providing proper care for Raquel. Mother admitted a lengthy substance abuse history and mental health issues. In addition, mother had had her parental rights terminated as to one of Raquel's half brothers after mother failed to reunify. Moreover, mother was a registered sex offender under Penal Code section 290 and could pose a substantial risk to Raquel. The petition stated that father was a registered sexual offender. Father was not a member of the child's household and did not provide for her care and support.

The detention report stated that mother had orally copulated a five-year-old girl in 1989 and had spent a year in jail for that offense. She also admitted having sexually molested one of her sons when he was eight years old.

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

[2] Mother is not a party to this appeal, and most facts concerning primarily mother have not been included in the statement of facts. Mother previously filed a petition under California Rules of Court rule 38.1, subdivision (a). (Case No. E039404) However, this

[footnote continued on next page]

The Department located father and informed him of the detention hearing. Father "did not show any interest in knowing how Raquel was doing," but provided information the Department requested.

A maternal aunt contacted the Department and stated she and her husband were interested in adopting Raquel. The aunt and uncle had previously adopted one of Raquel's half brothers.

At the detention hearing, the juvenile court found that father was Raquel's presumed father and that a prima facie showing had been made that Raquel came within section 300, subdivisions (b) and (g). The court ordered visitation for parents as long as they tested clean and ordered reunification services for father.

The jurisdiction/disposition report stated that father had confirmed in an interview that he was a registered sex offender. Father stated he was employed full time and lived with his mother. He had several children from prior marriages for whom he provided assistance "when possible." He denied having alcohol or substance abuse problems. He stated he had been through treatment following his conviction as a sex offender for the molestation of a 12-year-old niece, and he had not had any problems since and was not a pedophile. He stated he was willing to assist in the care of Raquel and stated that his sister was willing to provide care for her.

[footnote continued from previous page]
court dismissed the petition as untimely. The record from case No. E039404 has been incorporated in the record in the present case.

The report stated that Raquel was healthy. A referral had been generated to assess her developmental milestones. According to the foster mother, Raquel had remained silent for the first four days of her placement, but she had since "com[e] out of her shell" and interacted with the other children.

At the jurisdiction hearing, the court found the allegations of the petition true. The court ordered reunification services for father. On an ex parte application from the Department, the juvenile court authorized psychological evaluations of mother and father.

The Department filed a status review report that stated father continued to work full time and still lived with his mother. He had completed a parenting class and had undergone a psychological evaluation, although no report had yet been received. He was enrolled in a random drug screen program and attended Parents United classes once a week. He failed to show for three drug screens; the one screen he completed was negative. The report stated that Raquel was placed with her maternal aunt and uncle, and she was doing well with no identified emotional or mental issues. Father had visited Raquel twice, and the visits were described as "adequate." He also had sporadic telephone contact with her.

The Department filed an addendum report discussing the results of the psychological evaluation of father. The evaluator stated that father did "not appear capable of providing appropriate care, protection or supervision for his daughter on his own" and that father had "not taken responsibility for his own behavior."

At the status review hearing, the juvenile court terminated reunification services and set the matter for a section 366.26 hearing.

The Department filed a report for the section 366.26 hearing. The report stated Raquel was doing well in her placement with the maternal aunt and uncle, who wished to adopt her. Father had visited her once since the last review and had sporadic telephone contact with her.

The Department provided a preliminary assessment of the prospective adoptive parents. The assessment stated that Raquel was developmentally normal. The prospective adoptive parents had demonstrated a commitment to parenting her. They did not wish to participate in a post-adoption contract, but might consider supervised contact with extended family members, and they agreed to maintain contact with Raquel's half brothers.

Father filed a petition under section 388 requesting that the juvenile court order a family maintenance plan. He stated that he had actively participated in his program, had attended "a substantial amount of classes," and had had regular visits with Raquel. The juvenile court denied the petition.

At the section 366.26 hearing, the juvenile court found by clear and convincing evidence that it was likely Raquel would be adopted; termination of parental rights would not be detrimental to her; and adoption would be in her best interest. The court terminated parental rights.

III. DISCUSSION

Father has appealed, and at his request, we appointed counsel to represent him. Counsel has filed a brief under authority of *In re Sade C.* (1996) 13 Cal.4th 952, *People v. Wende* (1979) 25 Cal.3d 436, and *Anders v. California* (1967) 386 U.S. 738, setting

forth an integrated statement of the case and facts and asking this court to undertake an independent review of the entire record.

We provided father with an opportunity to file an appellate brief, and Father filed a letter brief in which he stated that he and the prospective adoptive parents had made arrangements for father to have visitation with Raquel, but that the adoptive parents had later told father he could not see Raquel if he filed an appeal. Father stated that he was not "attempt[ing] to stop the adoption proceedings," but was only "attempt[ing] to re-gain [his] parental rights as her biological father" and to be a part of her life.

Father appears to be arguing that an exception to adoptability exists under section 366.26, subdivision (c)(1)(A), which provides: "[T]he court shall terminate parental rights . . . unless the court finds a compelling reason for determining that termination of parental rights would be detrimental to the child due to one or more of the following circumstances: [¶] (A) The parents . . . have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship."

One court has observed, "The 'benefit exception' found in section 366. 26, subdivision (c)(1)(A) may be the most unsuccessfully litigated issue in the history of law." (*In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1255, fn. 5, disapproved on other grounds by *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414.) The parent has the burden of establishing the foundational facts for the exception. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

Father has failed to demonstrate that minor would benefit from continuing the parental relationship with him. The phrase "benefit from continuing the relationship"

"refer[s] to a 'parent-child' relationship that 'promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.' [Citations.]" (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 953, quoting *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

"[T]he parent must show more than frequent and loving contact or pleasant visits. [Citation.] 'Interaction between natural parent and child will always confer some incidental benefit to the child. . . . The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.]' [Citation.] The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive, emotional attachment from child to parent. [Citations.]" (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at pp. 953-954, quoting *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) "In other words, for the exception to apply, the emotional attachment between the child and parent must be that of parent and child rather than one of being a friendly visitor or friendly nonparent relative, such as an aunt. [Citation.]" (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 468.)

The record shows that father has never acted in the role of a parent to minor. Minor has never resided in father's household, and father has not supported minor.

Father showed, at most, "loving contact" or "pleasant visits." (See *In re L.Y.L.*, *supra*, 101 Cal.App.4th at pp. 953-954.) Thus, as the juvenile court impliedly found, there was simply no evidence that minor would be harmed -- much less "greatly harmed" (*Id.* at p. 953) -- by severing the natural parent-child relationship when loving prospective adoptive parents were ready to welcome minor into their home. We therefore reject father's argument that an exception to termination of parental rights existed.

Even though we are not required to conduct an independent review of the record under *In re Sade C.*, *supra*, 13 Cal.4th 952, we have done so. We have completed that review and find no arguable issues.

IV. DISPOSITION

The order appealed from is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

RICHLI
J.

KING
J.